Supreme Court, U.S.
FILED
00 732 NOV 6 2000
No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

BETHANY YOUNG,

Petitioner,

versus

CITY OF SULPHUR,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

RUDIE R. SOILEAU, JR.
Post Office Box 721
Lake Charles, LA 70602
(337) 433-0110

Counsel of Record for Petitioner Bethany Young

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

27PP

QUESTION PRESENTED

Whether the Fifth Circuit erred as a matter of law and in fact violated the recent mandate of this Court in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097 (2000), when it affirmed a trial court's Rule 56 summary dismissal of a Title VII gender-based employment discrimination claim, a summary dismissal that: is predicated on the defendant's contested evidence of legitimate, nondiscriminatory reasons for the termination; rejects conflicting evidence offered by Bethany Young – conflicting evidence that includes an acknowledgement of gender-based discrimination against Young by one of the defendant's supervisory employees; and improperly deprived the jury of any opportunity to make a determination of discrimination *vel non*?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 9

CONCLUSION 13

APPENDICES:

APPENDIX A – Decision of the United States Court of Appeals for the Fifth Circuit, August 8, 2000 ..... App. 1

APPENDIX B – Decision of the United States District Court for the Western District of Louisiana, March 15, 2000 ..... App. 3

TABLE OF AUTHORITIES

Page

CASES

Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000) 2, 9, 11, 12, 13, 14

STATUTES

28 U.S.C. §1254 1

42 U.S.C. §2000 2

PETITION FOR WRIT OF CERTIORARI

Bethany Young respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on August 8, 2000, affirming the trial court's Rule 56 summary dismissal of her Title VII gender-based employment discrimination claim.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is not reported. It is reproduced at Appendix A. The decision of the United States District Court for the Western District of Louisiana, also not reported, is reproduced at Appendix B. Neither court rendered any other rulings or reasons for judgment that are the subject of this petition.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on August 8, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

42 U.S.C.A. 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer –

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

A. Procedural History

Bethany Young filed this action against the City of Sulphur, Louisiana, and particularly its police department, alleging that the City terminated her employment in violation of Title VII, 42 U.S.C. §2000. Shortly before an April 2000 trial date, the City filed a Rule 56 motion asking the trial court to summarily dismiss the claims asserted by Bethany Young. Bethany Young filed an opposition to the motion and submitted, as part of that opposition, deposition testimony developed during discovery.

For reasons assigned, the trial court granted the City's motion for summary judgment and dismissed the claims asserted by Bethany Young. An appeal to the United States Fifth Circuit Court of Appeals, citing in part this Court's decision in *Reeves v. Sanderson Plumbing*

Products, Inc., 120 S.Ct. 2097 (2000), failed when that court affirmed the trial court's summary dismissal of Young's claims. This petition followed.

B. Background Facts

Bethany Young, a white female, twenty-four years of age, began her employment with the City of Sulphur on October 11, 1995. Bethany Young had elected some time earlier to pursue a career in law enforcement. In fact, she had enrolled at the local university, McNeese State University in Lake Charles, Louisiana, majoring in law enforcement, and through McNeese had even participated in an intern program that allowed her to work with deputies of the local sheriff. In the summer of 1995, Bethany Young submitted applications for employment to various local law enforcement entities, including the City of Sulphur. She accepted the first offer of employment – an offer received from Captain Keith Andrus with the Sulphur Police Department.

Bethany Young's employment with the police department in Sulphur lasted but eighty-nine days. It was tumultuous from the outset. She was told by superior officers that her mere presence at the physical facilities maintained by the department "made some of the male officers uncomfortable" – asserting that they, the male officers, could not speak the words they preferred to speak in the presence of Bethany Young because of her gender. Bethany Young was offered little or no formal training and, instead, this rookie officer was almost immediately assigned to a unit by herself and placed on an overnight or graveyard shift. Simply put, Bethany

Young was given a gun, a uniform, and a unit and then told to go to work. The formula for Bethany Young's employment was one destined for failure from the outset – and purposefully so.[1]

The City did not rest on the absence of any reasonable training program or even the resistance and dislike for a female officer expressed by fellow officers to dissuade Young from continuing her employment. The City, through officers in its department, aggressively undertook affirmative steps to ensure Bethany Young's career in law enforcement would end almost before it began. Bethany Young was repeatedly told that she was not properly following departmental procedures. When she expressed concern that she was not provided training or information needed to correct this problem and then sought the assistance of superior officers to remedy that concern she was charged with failure to properly follow the chain of command. The requested training and information was still withheld from Bethany Young.

---

[1] An obvious question (and one argued at the trial court level by the City) is why the City would hire a female patrol officer if it intended that female officer to fail from the outset. Evidence developed during discovery but not part of the City's Rule 56 motion suggests that the City had been pressured for some time by federal agencies to alter its historical hiring preference for white male applicants. At trial, the jury would have considered evidence that the City intended to "prove" through Bethany Young's brief employment that none of the available applicants could succeed and thus were not "qualified." The trial court's decision not only allows that argument to the City but essentially adds its stamp of judicial approval to the argument.

Incredibly, Bethany Young was repeatedly chastised for having interaction with deputies of the local sheriff's office, an office with concurrent jurisdiction in the City of Sulphur. She received a formal reprimand from her superiors in the department when deputies from the local sheriff's office also responded to a call assigned to Officer Young by the Sulphur dispatcher. Young had not requested assistance. The deputies simply responded as a matter of routine procedure. Young's superiors and some of her fellow officers began to refer to her as a "khaki back lover" – a derogatory term taken from the khaki colored uniforms then worn by members of the local sheriff's department.[2]

And even these efforts to thwart Bethany Young's desire to succeed as a law enforcement officer were apparently not enough in the view of the City. When her superior officers discovered that at least some members of the Sulphur Police Department might be sympathetic to Bethany Young and were even offering to provide Bethany Young with guidance and answers to questions that she posed, those superior officers reacted quickly

---

[2] Bethany Young's husband was employed by the local sheriff. There is evidence that Bethany Young suffered additional adverse employment action directly attributable to the person she dated and later married. The trial court stated that this testimony offered additional evidence that Young's mistreatment was not gender-based. The trial court's opinion notwithstanding, it certainly seems that adverse action based on Bethany Young's personal relationships outside of work is inherently gender-based, particularly in the absence of any evidence that male employees were similarly treated.

and harshly. One officer at the Sulphur department, Officer Patrick Johnson, acknowledged that he was chastised for assisting Bethany Young. When found assisting Officer Young, Johnson was taken aside by a superior officer, accused of having an illicit sexual affair with Young, asked just what his interest might be in helping Young if not sexual relations, and essentially convinced that he should never again assist Young. The warning worked; Officer Johnson never again openly provided any assistance or guidance to Officer Young.

The effect of these efforts by the Sulphur Police Department was exactly as the City intended, or almost. Bethany Young suffered repeated adverse employment action, adverse action that was exclusive to Young and based on her gender. But Bethany Young did not capitulate; she kept working to succeed.

Gender-based discrimination is rarely acknowledged in the evidence gathered in anticipation of trial in a Title VII claim. Not so here. The former assistant police chief for the Sulphur Police Department, David Fontenot, conceded in deposition testimony that Bethany Young had been subjected to resistance and opposition in her efforts to succeed at her job, resistance and opposition that was based on her gender.

In its motion, the City listed numerous shortcomings or failures on the part of Bethany Young that supposedly supported its decision to terminate her employment. Many of these are directly attributable to the efforts of her superiors to keep policies and procedures from Bethany Young; one was not. Early in her brief employment with the City, on November 5, 1995, Bethany Young

reported for her night shift despite an ongoing illness (flu symptoms) that had forced her to seek medical treatment and take prescription medications. Her immediate supervisor, Phil English, one of if not the main protagonist for Bethany Young, demanded that new hires show up for work. Indeed, English testified that he had listed missed work as a "pet peeve" in his initial conversations with Patrol Officer Young. Regardless, Bethany Young erred. She fell asleep in her unit while stopped at an intersection in the City of Sulphur and while on duty. Bethany was reprimanded but not terminated for this incident. To the contrary, Bethany Young's employment with the City of Sulphur continued for many weeks thereafter.

The actual decision to terminate Bethany Young came much later, on January 10, 1996. The timing is neither coincidental nor insignificant. Bethany Young was terminated on the eighty-ninth day of her employment. On the next day of employment, day ninety, Bethany Young would have been vested with the protections afforded by civil service.

The reason listed by the City for Bethany Young's termination was concocted at best, and in fact dishonest.[3]

---

[3] It is undisputed that the reason listed for Bethany Young's termination at the time of the termination is the unattended vehicle on a public road discussed in the text above. The additional reasons that appear in the trial court's reasons for its decision were gathered and then offered by counsel for the City in support of the dismissal motion. The fact that these additional reasons for the termination were an after-the-fact effort by the City, evidence that surely would have been important to a jury, is not addressed in the trial court's decision.

Captain English maintained that the vehicle of an individual stopped and arrested by Officer Young for the offense of driving while intoxicated (an individual who was later released by Captain English not because he was not intoxicated but instead because his nephew was an officer with the police department in a nearby city) had been left on a public road. In fact English maintained that he was forced to move the vehicle later that same night. Officer Young absolutely denied that the vehicle was left on a public road and maintained instead that the vehicle was left in a parking lot. English's statements were not truthful. English could not have moved the vehicle to the parking lot because he never had possession of or access to the vehicle's keys. Confronted with the blatant impossibility of his statements, English could offer no explanation.

In truth, the proffered reason for the termination of Bethany Young was nothing more than a desperate excuse to force Bethany Young out of the department before she was afforded civil service protection. A strategy adopted only after earlier efforts to discourage Bethany Young had failed, and a strategy that has thus far proved successful.

In a final but telling event, Captain English, who was Young's direct supervisor and whose command Young had been severely criticized for circumventing during her employment, did not deliver the termination. Instead, the City brought Captain Andrus in to perform the termination. Why? The answer is exposed in the City's motion for dismissal: Andrus hired Young and the act of termination performed by Andrus allows the City to urge a legal defense relying on the presumption that an employee

fired by the same person who hired that employee has not suffered unlawful discrimination. A strategy that is also successful thus far.

REASON FOR GRANTING THE WRIT

- **The decision of the United States Court of Appeals for the Fifth Circuit is contrary to the recent decision of this Court in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097 (2000), and the Fifth Circuit has, therefore, erred as a matter of law.**

The decision of the Fifth Circuit affirms and thereby leaves standing a decision by the trial court that engages in the very analysis prohibited by this Court's decision in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097 (2000). That is, the trial court's decision is based on supposedly legitimate, nondiscriminatory reasons proffered by the City to support its decision to terminate Bethany Young. The trial court ultimately concluded that at least one of the three reasons offered by the City in its motion was sufficient. In reaching this conclusion, the trial court rejected competing evidence submitted by Young.

The analysis conducted by the trial court that led to its decision to grant a summary dismissal of Young's claims evidences the very analysis prohibited in *Reeves*. Although the *Reeves* analysis is set in the context of a post-trial motion for judgment as a matter of law, the decision of the trial court here to dismiss the claims

asserted by Bethany Young errs for the very same reasons. The trial court considered Young's *prima facie* showing of discrimination, observed that the City articulated legitimate, nondiscriminatory reasons for her termination, and then granted a summary dismissal. Thus, the trial court essentially weighed the evidence presented and made a factual determination that is simply not proper in the context of a Rule 56 motion for summary judgment.

The trial court notes that Young, in the face of a Rule 56 motion, must offer evidence to support her claim of unlawful discrimination. Certainly this is true. A plaintiff may not stand idly by once confronted by a Rule 56 motion for summary dismissal. But Bethany Young did not stand idle. To the contrary, she offered clear evidence consistent with the subsequent teaching of this Court in *Reeves* that simultaneously supports her claim and defeats, or should defeat, the defendant's motion for dismissal. And in fact a reading of the trial court's written reasons demonstrates that the dismissal is premised on the City's evidence of "legitimate, nondiscriminatory" reasons for the termination of Bethany Young as well as the trial court's own apparent belief that the City's stated reasons are credible and sufficient. Through this process, the trial court has improperly deprived Young of any opportunity to have the trier of fact, the jury, weigh and resolve the competing claims and conflicting evidence offered by the opposing parties. This result violates *Reeves*.

> Although intermediate evidentiary burdens shift back and forth under this framework, "[t]he ultimate burden of persuading the trier of

> fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Burdine, 450 U.S., at 253, 101 S. Ct. 1089. And in attempting to satisfy this burden, the plaintiff – once the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision – must be afforded the "opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." Ibid.; see also St. Mary's Honor Center, supra, at 507-508, 113 S. Ct. 2742. That is, the plaintiff may attempt to establish that he was the victim of intentional discrimination "by showing that the employer's proffered explanation is unworthy of credence." Burdine, supra, at 256, 101 S. Ct. 1089. Moreover, although the presumption of discrimination "drops out of the picture" once the defendant meets its burden of production, St. Mary's Honor Center, supra, at 511, 113 S. Ct. 2742, the trier of fact may still consider the evidence establishing the plaintiff's prima facie case "and inferences properly drawn therefrom . . . on the issue of whether the defendant's explanation is pretextual," Burdine, supra, at 255, n. 10, 101 S. Ct. 1089.

Reeves, supra, at 2106.

In fairness to the trial court it is perhaps appropriate to note that the decision of this Court in *Reeves* was not rendered until after the trial court had rendered its decision. In fact, the *Reeves* decision was published during the appellate proceedings below and was first cited in Bethany Young's reply brief submitted to the Fifth Circuit. But the decision of the Fifth Circuit to affirm essentially without discussion the trial court's summary dismissal of Bethany Young's claim cannot be justified

under the ruling of *Reeves*. A closer look at the trial court's ruling itself confirms this very conclusion.

The trial court in its reasons for granting the City's motion for summary judgment began by acknowledging "three different reasons" listed by the City of Sulphur for the termination of Bethany Young. The trial court then suggests that one of the reasons offered by the City of Sulphur is not contested. The trial court is mistaken. Each of the three allegations asserted against Bethany Young in order to support the termination is contested. Specifically, the allegation that Bethany Young mishandled evidence is directly contested by the evidence that the City of Sulphur repeatedly blocked and denied the training and information requested by Bethany Young. Stated otherwise, the City's allegation is simply that Bethany Young did not know what it refused to let her know. That justification hardly supports the termination. Moreover, this analysis by the trial court is contrary to *Reeves* because it deprives the trier of fact of any opportunity to consider the plaintiff's evidence of discrimination and inferences drawn from that evidence.

Against the backdrop of *Reeves*, it is also important to recognize that the reasons for termination relied upon by the trial court were not the reasons offered by the City when it terminated Bethany Young. Instead, the specific and exclusive reason offered by the City when it elected to terminate Bethany Young was the traffic stop that occurred on the night of her termination. And even the trial court's decision acknowledges that this allegation is contested.

The analysis undertaken by the trial court improperly intercedes into the role of the jury and that violates the rule of *Reeves*. The trial court has, through the procedural vehicle of Rule 56, improperly substituted its own findings of fact for those of the proper fact finder: the jury. The decision of the Fifth Circuit to affirm this decision is likewise improper.

CONCLUSION

This Court spoke clearly in *Reeves* detailing the boundaries that limit the right of the courts to intervene in the work of the jury. Whether it occurs after the jury has spoken or prior to the jury's verdict, the intercession is improper if the procedural vehicle is used to resolve conflicting evidence that would otherwise be resolved by the jury. That is the result that has occurred here.

Frankly, the proper boundaries between the role of the court and the role of the jury have long since been recognized in other areas of the law. The *Reeves* decision stated clearly that the same rules and the same boundaries must be acknowledged and adhered to in the instance of discrimination in the workplace. A simple but important principle: the resolution, on one hand, of a showing by the plaintiff of a *prima facie* case and, on the other, evidence of a defense offered by the employer must reside with the jury at trial, not earlier nor later.

It is respectfully submitted that the United States Fifth Circuit Court of Appeals has repeatedly and seemingly almost as a matter of course upheld the summary dismissal of claims of employment discrimination. This

practice not only encourages but in fact teaches the district courts in its circuit to deal aggressively with these claims through summary rulings that disrupt the role of the jury. This Court's decision in *Reeves* teaches otherwise. Nonetheless, in the instance of Bethany Young's claim, the message has been missed. Bethany Young therefore pleads for this Court's intercession.

RUDIE R. SOILEAU, JR.
Post Office Box 721
Lake Charles, LA 70602
(337) 433-0110

Counsel of Record
for Petitioner Bethany Young

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-30418
(Summary Calendar)

BETHANY YOUNG

Plaintiff-Appellant,

v.

CITY OF SULPHUR

Defendant-Appellee

Appeal from the United States District Court
for the Western District of Louisiana
(97-CV-31)

(Filed Aug. 8, 2000)

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:*

In this suit alleging sex discrimination, pursuant to Title VII of the Civil Rights Act of 1964, as amended, Plaintiff-Appellant Bethany Young appeals the district court's grant of Defendant-Appellee's motion for summary judgment. Young was employed by the City of

---

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Sulphur on a 90-day probationary basis, and her employment was terminated before that temporary period expired. She alleges that her termination was the result of sex discrimination on the part of the police department. The City of Sulphur argues in response that her termination was the result of her inability to perform the requirements of her role as a police officer. Having carefully and fully considered the record and the briefs of counsel as well as the opinion of the district court, we are satisfied that summary judgment was properly granted, and we affirm the judgment of the district court for essentially the same reasons set forth in its comprehensive opinion.

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

BETHANY YOUNG	:	**CASE NO. 97-0031**
VERSUS	:	**JUDGE TRIMBLE**
CITY OF SULPHUR	:	**MAGISTRATE JUDGE WILSON**

MEMORANDUM RULING

(Filed March 15, 2000)

Presently before the court is a motion for summary judgment and to recover attorney's fees, costs, and expenses [doc. 30] by defendant City of Sulphur. This motion is brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the following reasons, this court finds that the motion for summary judgment by the aforementioned defendants should be GRANTED and the motion for attorney's fees, costs, and expenses shall be DENIED.

I. FACTURAL BACKGROUND

Bethany Young went to work for the City of Sulphur Police Department for a 90 day probationary period. For her training Bethany Young was assigned to Captain English. On the 89th day of Young's tenure, she was fired. Defendants point to three different reasons why she was terminated.

First, Young had previously fallen asleep at an intersection on duty, while the car was in gear. Second, Young apparently mishandled evidence. Third, although disputed by Young, Captain English claimed that Young had not properly secured a vehicle after a traffic stop.

Young has filed suit and claims that she was fired because of her gender because the reasons given by the defendant were mere pretext. She also has alleged improper actions and the intentional infliction of mental and emotional distress.

II. LEGAL STANDARD

Rule 56(c) provides that "[summary] judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c) The movant bears the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings, depositions, and answers to interrogatories, admissions on file and affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); *Williams v. Adams*, 836 F.2d 958, 960 (5th Cir. 1988). Once a proper motion has been made, the non-moving party may not rest upon mere allegations or denials in the pleadings but must set forth specific facts showing the existence of a genuine issue for

trial. *Celotex Corp.*, 477 U.S. at 322-23, 106 S.Ct. at 2552-53; *Anderson*, 477 U.S. at 257, 106 S.Ct. at 2514-15; *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, 506 U.S. 825, 113 S.Ct. 82, 121 L.Ed.2d 46 (1992). Summary judgment is mandated if the non movant fails to make a showing sufficient to establish the existence of an element essential to her case on which she bears the burden of proof at trial. *Celotex Corp.*, 477 U.S. at 322, 106 S.Ct. at 2552.

The Supreme Court has noted that the summary judgment motion may be an appropriate avenue "to secure the just, speedy, and inexpensive determination" of a matter. *Celotex*, 477 U.S. at 327, 106 S.Ct. at 2555. Consistent with the concern for judicial economy, "the mere existence of a scintilla of evidence in support of the [non-moving parties'] position" is insufficient to defeat a properly supported motion for summary judgment. *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512.

III. LEGAL ANALYSIS

Young alleges wrongful discharge, improper actions, and intentional infliction of emotional distress. This court will address the wrongful discharge first and address the improper actions and intentional infliction of emotional distress together.

A. Discriminatory Discharge

A prima facie case for discrimination requires that plaintiff show: 1) s/he is a member of a protected class; 2) she was discharged, either actually or constructively, or

suffered some other adverse employment action; 3) she was qualified to perform her job, and 4) she was replaced by a person outside the protected group. *See St. Mary's Honor Center vs. Hicks,* 509 U.S. 502, 113 S.Ct. 2742 (1993). Defendant's brief only addresses the issue as to whether or not plaintiff was qualified to perform her job.[1] Once a prima facie case is established, the burden shifts to defendant to provide legitimate, non-discriminatory reasons for the termination.

Defendant articulates three distinct reasons for the termination. First, Young fell asleep in a patrol car, at a busy intersection, with the engine running, and the transmission in gear. Second she was cited for failure to secure a vehicle of an arrestee. Finally, she was cited for mishandling evidence.

Young argues that she fell asleep because she was sick, on medication, and it was an overnight shift. She went to work because she understood Captain English to say that people shouldn't miss work because they were sick.[2] Young denies the allegations that she failed to secure the vehicle. No explanation is given for the mishandling of evidence by the plaintiff.

---

[1] Neither party addressed whether or not Young was replaced by a man. It is troublesome that such a fundamental requirement is completely ignored by both parties.

[2] Captain English contends that people shouldn't miss work for "sickness" when they could come in, but chose not too. Examples given by Captain English are absences due to stubbing one's toe or missing a 12 hour shift for a headache that is gone in 30 minutes.

Since Young does not appear to contest the mishandling of evidence, this provides a legitimate non-discriminatory reason for terminating the plaintiff.[3] Additionally, even though plaintiff is disputing the first two reasons as pretexts for gender discrimination, Young fails to provide any evidence that the termination was *because of* her gender. The mere fact that she might have been wrongly terminated is not enough. Young must present evidence that she was wrongly terminated *because of* her gender.

In fact, Young, herself, provides a non-gender based reason why Captain English did not like her. In her deposition Young stated that Captain English did not like her because he did not like her spouse, Donald DeLouche, who worked for the Sheriff's department. Even if Captain English managed to get Young terminated, Young admits that Captain English's dislike of plaintiff stems from who her spouse was, not plaintiff's gender.

All other claims should be dismissed because Young has nothing more than thin threads of allegations. Assuming that Captain English did say the things alleged and had her terminated for the two false reasons, there is just not any proof that he did these things *because of* her gender.[4] He might have disliked her, but termination for

---

[3] Although this court need not address the disputed reasons for discharge, this court notes that Young's "excuse" for falling asleep would not as a matter of law suffice. Not only did Young fail to do her job of protecting the people of Sulphur, but she endangered the safety of the people of Sulphur.

[4] Although plaintiff may argue that the reason for Young's dismissal is a question of fact, in this case this is not true. Young

dislike is not a cause of action. Unless he disliked and fired her *because* she was a woman. Therefore, because no evidence has been presented to raise a question of fact, this court shall grant defendant's motion for summary judgment. However, this court shall deny an award of attorney's fees, costs, and expenses.

B. Other Claims

Recently the Fifth Circuit has affirmed the granting of summary judgments when stray marks were the basis for the allegations of discrimination. *See generally Streeram vs. Louisiana State University Medical Center-Shreveport*, 188 F.3d 314 (5th Cir. 1999); *Boyd vs. State Farm Ins. Co.*, 158 F.3d 326 (5th Cir. 1998); *Brown vs. CSC Logic*, 82 F.3d 651, 655 (5th Cir. 1996); *Anderson vs. Douglas & Lomason Co., Inc.*, 26 F.3d 1277 (5th Cir. 1994). These stray remarks are not enough to show discrimination. *Id.*

This court has read the statements that plaintiff alleges "allude" to gender discrimination in the work place. However, after reading those sections, the court finds that the evidence is not competent to withstand a motion for summary judgment. These stray statements are confusing, not directly on point, and do not indicate that Young experienced discrimination because of her gender. Additionally, other female officers did make it past the probationary period at the City of Sulphur Police Department. Thus, there exists no competent evidence to deny the motion for summary judgment on all remaining

---

only *alleges* discrimination. No real *evidence* has been presented to raise a question of fact.

and pending issues. Therefore, this court will grant defendant's motion.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 15th day of March, 2000.

/s/ James T. Trimble, Jr.
JAMES T. TRIMBLE, JR.
UNITED STATES
DISTRICT COURT JUDGE